



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2003

Ms. Mary E. Reveles
Assistant County Attorney
County of Fort Bend
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2003-8908

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192654.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information pertaining to two specified investigations. You state that the sheriff does not maintain information pertaining to one of the specified investigations.¹ You claim, however, that some of the remaining requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state,

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dismissed); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

and provide documentation showing, that the case associated with the submitted criminal investigation documents concluded without the filing of charges against the individual who was the suspect in that case. Thus, we understand from your representations that the submitted criminal investigation documents pertain to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. Therefore, we find that section 552.108(a)(2) is applicable to the submitted criminal investigation documents.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the sheriff may withhold the criminal investigation documents, that we have marked, pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the sheriff maintains the discretion to release all or part of this particular information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You also claim that the submitted internal affairs follow-up investigation documents are excepted from disclosure in their entirety pursuant to section 552.108(a)(2) of the Government Code. We note that you do not argue, nor does it appear, that this particular investigation resulted in any other criminal investigation into the alleged conduct of the individual who was the suspect in the prior criminal investigation. Therefore, we have no basis for concluding that any portion of the submitted internal affairs follow-up investigation documents is excepted from disclosure under section 552.108(a)(2) of the Government Code. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.--Austin 2002, no pet.); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (predecessor to section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to Internal Affairs Division investigation file when no criminal charge against officer results from investigation of complaint against police officer). Accordingly, we conclude that the sheriff may not withhold any portion of the submitted internal affairs follow-up investigation documents under section 552.108(a)(2) of the Government Code.

We note, however, that portions of these particular documents are excepted from disclosure pursuant to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has

family members.² See Gov't Code § 552.117(a)(2). Accordingly, we conclude that the sheriff must withhold the portions of these particular documents that we have marked pursuant to section 552.117(a)(2) of the Government Code. The sheriff must release the remaining portions of these particular documents to the requestor.

In summary, with the exception of basic information that must be released to the requestor, the sheriff may withhold the criminal investigation documents, that we have marked, pursuant to section 552.108(a)(2) of the Government Code. With the exception of the information within the submitted internal affairs follow-up investigation documents that we have marked pursuant to section 552.117(a)(2) of the Government Code, the sheriff must release the submitted internal affairs follow-up investigation documents to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

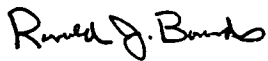
² Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. See Crim. Proc. Code art. 2.12.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 192654

Enc. Marked documents

c: Ms. LeaAnne Klentzman
Fort Bend Star
869 Dulles, Suite C
Stafford, Texas 77477
(w/o enclosures)